

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

EDWARD DALE KLYN
Wayne County, IA

ADMINISTRATIVE ORDER
NO. 2008-AFO- 14

TO: Edward Dale Klyn
PO Box 343
Corydon, Iowa 50060

I. SUMMARY

This Order requires you to (1) remove and properly land apply all manure at your facility; 2) remove all manure from the lots by May 1 and November 1 of each year and maintain proper records; and 3) pay a penalty of \$5,000.00 within 60 days of the receipt of this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross, Field Office 5
Iowa Department of Natural Resources
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0268

Relating to appeal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Edward Dale Klyn owns and operates a small open cattle feedlot located at the former livestock sale barn on Highway 40 on the north side of Allerton, Iowa. Livestock, mainly cattle, are housed inside the building and outside in small lots south and east of the building. There are railroad tracks to the south, residences to the north and east, and commercial property to the west. The feedlot is level. Runoff goes to a ditch to the east and to a culvert feeding a drainage way along the railroad tracks to the southeast.

2. On February 12, 2002, DNR Field Office 5 received a complaint about improper manure storage and handling at the old sale barn in Allerton. On March 13, 2002, Julie Nelson, environmental specialist for DNR Field Office 5, visited the site and talked with Mr. Klyn. Mr. Klyn agreed to remove the manure from the south lot within two weeks. On March 18, 2002, DNR Field Office 5 sent Mr. Klyn a letter summarizing the visit. At that time the DNR did not have rules addressing stockpiled manure, but Mr. Klyn was reminded of manure control rules for open lots.

3. On July 19, 2002, DNR Field Office 5 received a complaint indicating that the manure had not been removed from the lot. On July 29, 2002, Ms. Nelson contacted Mr. Klyn by phone and he agreed to remove the manure. On August 26, 2002, Ms. Nelson visited the site and found that the original manure stockpile had been removed, but another had been developing east of the building. A phone message was left for Mr. Klyn on September 9, 2002. There is no documentation of a return call.

4. On March 19, 2003, DNR Field Office 5 received a complaint indicating that the manure had not been removed from the lot and this was causing an odor. On March 27, 2003, Mr. Nelson visited the site and met with Mr. Klyn. No odors or runoff were detected, but manure stockpiles were present. On May 3, 2003, DNR Field Office 5 sent Mr. Klyn a letter requiring him to remove and properly land-apply manure stockpiles by October 10, 2003.

5. On May 1, 2006, DNR Field Office 5 received a complaint indicating that manure piled up and was never hauled away from the feedlot. The complaint also stated that this was causing a terrible odor. On May 8, 2006, Bill Gross, environmental specialist for DNR Field Office 5, visited the site and detected manure odors. Manure was built up in the feedlot and stockpiled in places. Water in the ditches around the feedlot appeared clear. In a letter dated May 9, 2006, Mr. Klyn was required to remove manure in the spring and fall annually. He was required to submit a written response that manure had been removed by June 10, 2006. No response was received.

6. On March 26, 2007, DNR Field Office 5 received a complaint indicating that manure had not been cleaned up last year and 40 cattle were in the feedlot. On May 3, 2007, Mr. Gross visited the site and met with Mr. Klyn. Manure was built up and stockpiles remained in the feedlot. Mr. Klyn indicated that he had begun to remove manure, but his equipment broke down.

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7. On May 14, 2007, DNR Field Office 5 issued a Notice of Violation letter to Mr. Klyn. The letter cited Mr. Klyn for improper manure management. The letter informed Mr. Klyn that the matter would be referred for an enforcement action if he failed to clean up the manure by June 1, 2007. On June 8, 2007, Mr. Gross visited the site and found that a couple piles of manure had been removed from the south lot. However, no manure had been removed from the east lot. Liquid manure from rainfall was pooled in the east ditch.

8. On March 30, 2008, Bill Yeager, Wayne County Sanitarian, informed DNR Field Office 5 that he had visited Mr. Klyn's feedlot and noted that manure was piled up approximately three feet around the feedlot, with more manure piled in the feedlot. He also collected samples of the runoff from the feedlot. The sample results produced the following results: E-coli-7,800/100mL, fecal coliform-5,900/100mL, nitrate-0.08 mg/L, and ammonia-nitrogen-0.53 mg/L.

IV. CONCLUSIONS OF LAW

1. 567 IAC 65.101(8) (459A) states that confined animal feeding operations must manage stockpiles as required by 65.101(2) or 65.101(3). Stockpiles of manure scraped from open feedlot operations and stockpiles of settleable solids shall be land applied in accordance with 65.101(6) as soon as possible but not later than six months and stockpiles shall not be located in areas where water ponds or has a concentrated flow. Mr. Klyn stockpiled manure for more than six months in a lot where water pools. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Klyn to do the following:

1. Remove and properly land apply all manure at this facility within 60 days of the receipt of this Order. Submit a daily record of manure handling that includes the amount of manure, location of manure application with maps, and application rates within 10 days of completion of the manure application to DNR Field Office 5;
2. Remove all manure from the lots by May 1 and November 1 of each year and maintain a record of manure removal and land application. This includes amounts of manure, locations of applications (maps), dates of application, and application rates;
3. Pay a penalty of \$5,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order; and
4. If manure application is not completed within 60 days of receipt of this Order, pay a stipulated penalty in the amount of \$50.00 per day past the deadline in an amount up to \$5,000.00.

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VI. PENALTY

1. Iowa Code sections 455B.191 and 459A.502 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Klyn is saving time and money by not properly removing and applying the manure. Assuming the removal and land application of the manure would take about 16 hours, and conservatively, the rate would be \$50.00 per hour, Mr. Klyn has save approximately \$800.00.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The stockpiled manure has the potential to be released into the environment. Proper manure storage and handling is fundamental to environmental protection and quality of life. The DNR has expended a large amount of staff time in an effort to work with Mr. Klyn to properly remove and land-apply the manure. The continuous violation threatens the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor. Stipulated penalties will be assessed if the stockpiled manure is not promptly removed. The additional penalties will be assessed because of the ongoing threat the stockpiled manure poses on the environment.

Culpability – All animal feeding operation operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. DNR personnel has worked with Mr. Klyn and met with him several times on-site since 2002. Yet, he has failed to properly manage the manure or respond to the DNR. Therefore, \$2,200.00 is assessed for this factor. Stipulated penalties will be assessed if the stockpiled manure is not promptly removed. The additional penalties will be assessed because of Mr. Klyn's continued noncompliance with the regulations.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with sections V.1 – V.3 of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 459A.502 and 455B.191. The DNR reserves the right to issue an administrative order or to refer to the Attorney General in lieu of collecting stipulated penalties pursuant to this Order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
May, 2008.

No Facility Number; Kelli Book; DNR Field Office 5; Ken Hessenius; Gene Tinker; EPA; VIII.D